IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.937 OF 1995

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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DAXABEN, WIFE OF SURESH VALLABHBHAI AHIR & ANR.
VERSUS
STATE OF GUJARAT & ORS.

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Appearance:
MR UTPAL M PANCHAL for the petitioner
MR SAMIR DAVE, APP, for respondent No.1
MR ADIL MEHTA for respondents No.2 & 3

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Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 28/2/2001

C.A.V. JUDGMENT

#. Challenge by this petition under Article 227 of the Constitution of India has been made by petitioners to the order of the Addl. Sessions Judge, Surat, dated 18.4.95 passed in two criminal revision applications No.91/94 and 92/94, whereunder, the order dated 20th September, 1994 of Judicial Magistrate, First Class, Kathor, below ex.6, 8 and 9 was confirmed.

#. The facts of the case are that the petitioner No.1 is the real sister of petitioner No.2. She was married to one Suresh Vallabhbhai Ahir in the year 1987. Suresh Vallabhbhai Ahir is the son of respondents No.2 and 3. This marriage was held at Delad, District Surat. After marriage, the petitioner No.1 went to Panama, U.S.A. with her husband and in-laws. Out of this wedlock, daughter Roshni was born. Somewhere in the year 1992, the family, along with the petitioner No.1, returned India and resided at their native place Delad, District Surat. During that period, what it is stated by petitioners that the husband of the petitioner No.1, along with other relatives, had started to harass and torture her and so many times, she was subjected to cruelty. The in-laws, along with the husband, came at the place of the petitioner No.1's father and left her there. The petitioner No.1 has lodged a criminal complaint before the learned Judicial Magistrate, First Class, Kathor, for commission of offence u/s.498A, 506(2), 323, 504 and 114 of the Indian Penal Code. This complaint is registered as criminal case No.485/92 against Suresh Vallabhbhai Ahir, the husband, since absconding and the respondents No.2 and 3, the father-in-law and mother-in-law. In that case, Suresh Vallabhbhai and respondents No.2 and 3 were arrested by police. Subsequently, on their application, all the three accused were released on bail on furnishing of surety of Rs.2,000/= for each. Against that order of the Judicial Magistrate, First Class, the State has preferred revision application to the Sessions Court and the Sessions Court has increased the amount of surety to Rs.10,000/=. Immediately after grant of bail what it is stated by petitioners that Suresh Vallabhbhai has absconded, i.e. he has gone to Panama, U.S.A. The Court has issued bailable warrant of Rs.10,000/= for that person and passport of respondents No.2 and 3 were directed to be deposited in the court of Judicial Magistrate. The bailable warrants could not be served to Suresh Vallabhbhai and notice was issued to the surety. The surety has declared before the court that Suresh Vallabhbhai has left India and went away to Panama, U.S.A. The surety filed application at ex.7 and prayed therein that in the circumstances, he is not able to

continue as surety of this person and further showed his willingness to pay the amount of Rs.2,000/=. The learned Judicial Magistrate, First Class, has accepted this amount and released the surety.

#. The respondents No.2 and 3 are aged persons. Their counsel stated that they are senior citizens and which fact has not been controverted by the learned counsel for the petitioners or by the learned Asstt. Public Prosecutor.

#. The respondents No.2 and 3 filed an application purporting to be u/s.317 of the Criminal Procedure Code for segregation of trial. This application is marked as ex.6. The reason given for this application is that the accused Suresh Vallabhbhai is absconding and to procure his attendance in the court may take long time and this case will be a hanging sword on their head. The petitioner No.2 has filed application below ex.8, u/s.82 of the Criminal Procedure Code. He filed another application u/s.83 of the Criminal Procedure Code which is marked at ex.9. It is not in dispute and it is also clear from paragraph 2.7 of this special criminal application that the complainant, petitioner No.1, has not filed any application either u/s.82 or 83 of the Cr.P.C. Under the order dated 20th September, 1994, the learned Judicial Magistrate, granted application filed by respondents No.2 and 3 below ex.3. The trial was segregated and the applications of the petitioner No.2, below ex.8 and 9 were rejected. Against this order, the petitioners preferred two revision applications which were registered as Cr.Misc. Applications No.91/95 and 92/95. The first revision has been filed by petitioners against the order of the learned trial court passed below ex.6. The second revision application is filed against the order which has been passed by the learned trial court below ex.8. As stated earlier, the Addl. Sessions Judge, Surat, under his order dated 18.4.95, has dismissed both these criminal revision applications. Hence this special criminal application.

#. This special criminal application was admitted by the court on 22nd June 1995 and interim relief in terms of paragraph 6(d) has also been granted, meaning thereby, the order dated 20.9.94 below ex.6 passed by the trial court has been stayed and further proceedings of criminal case No.485/92 were also stayed.

#. At the outset, the court has asked the learned counsel for the petitioners whether during this period of five years during which this special criminal application

remained pending, Suresh Vallabhbhai surrendered to the court or even prayed by the petitioners to the court for arresting him, Mr.Panchal fairly submitted that he has neither surrendered nor he has been arrested. So the position remains that the accused Suresh Vallabhbhai neither surrendered nor he could have been brought to the court by arrest warrant. He is, as per the case of the learned counsel for the parties, at Panama, U.S.A. and to procure his attendance in the criminal court is very difficult and it may take long time. In case the trial of these two persons in the criminal case is not separated, certainly, it will result in causing prejudice and may cause a serious injustice to these senior citizens.

#. The learned counsel for the petitioner challenged the validity, legality and correctness of the orders of both the courts below passed below ex.6 but having heard the learned counsel for the petitioner, I do not find any merits in the contentions raised by him. It is true that Suresh Vallabhbhai, is the son of these two respondents but merely on this relation, how far it is justified that the trial of the case which is there against these two senior citizens should be kept in abeyance for all the time till that person who is absconding is arrested and brought to the court or he himself surrenders to the court. The respondents No.2 and 3 are parents but it is very difficult to believe what to say to accept that they can forcibly bring this person, their son, who is absconding from the court, before the court. They can make a request to that person to attend the court but they cannot forcibly bring that person in India and to the court where this criminal case is pending. The learned counsel for the petitioners on being asked by the court, has failed to show any provision of law under which it is obligatory on the respondents No.2 and 3 only on the ground that they are parents of the absconding accused, that they have to bring and produce him before the court. These two persons are there in the criminal case as co-accused and one of the co-accused is absconding and the complainant as well as the court is unable to procure his attendance in the proceedings, how far it is justified to delay the trial against these two persons. The very insistence of the learned counsel for the petitioners for rejection of this application below ex.6 and quashing and setting aside of the order of the courts below to the extent it relates to grant of this application goes to show that what the learned counsel for the respondents No.2 and 3 states that these two persons have been falsely implicated in the criminal case prima-facie may be correct. However, trial of the case

is pending and nothing can be said finally on this point, otherwise, it may prejudice the case of the other side. I therefore refrain from considering the merits of the contentions raised by learned counsel for respondents No.2 and 3 that these two persons were falsely implicated in the case as it is open to them to raise all these points before the trial court. Not only this, in the facts of this case, coupled with the fact that these two respondents are senior citizens and their matters are to be expeditiously decided, I find the order passed by the trial court below ex.6 is just and reasonable to which no interference can be made by this court under Article 227 of the Constitution. Every order passed by the court below even if prima-facie appears to be erroneous or illegal, needs not to be interfered with and quashed and set aside by this court unless the maintenance of the same results in miscarriage of justice or causes prejudice to the person against whom the same has been made. The learned counsel for the petitioners on being asked by the court, has failed to show how this order of the learned trial court passed below ex.6 if is maintained by this court, will result in miscarriage of justice or will cause prejudice to the petitioners. It is in the facts and circumstances of the case, an order in the larger interest of both the parties. If these two persons, the respondents No.2 and 3 have really committed offence punishable under Sections 498A, 506(2), 323, 504 and 114 of Indian Penal Code, what for these petitioners are praying for keeping the trial in abeyance till Suresh Vallabhbhai either surrenders voluntarily to the court or by arrest, is brought to the court. There are three accused and in fact, if really, these two persons, i.e. respondents No.2 and 3 have committee offence as alleged against them by petitioner No.1, her endeavour should have been to see that the trial is completed against these accused and on proof of charges they are punished. That application which is filed by respondents No.2 and 3 in fact, could have come from the side of petitioner No.1. Both the courts below have not committed any error or illegality nor I find any error apparent on the face of the orders passed by the courts below to the extent those relate to ex.6 which calls for interference of this court under Article 227 of the Constitution.

The challenge made by petitioners to the order of the trial court which has been confirmed by the Addl. Sessions Judge to the extent it relates to dismissal of the application below ex.8 and 9 is not without substance and merits. It is a case where this accused Suresh Vallabhbhai has in fact, abused the process of the court. Bail has been granted to him on the condition that he

will not leave India and he abused that indulgence shown, granted and extended to him in the criminal proceedings. The learned trial court at the time of releasing him on bail in this criminal case should have taken all the care and caution moreso where it comes on record that the person has a passport and his relation and affiliation to the foreign country, to direct him to surrender passport in the court. In such matters, the court below should not feel satisfied, content and secured in the proceedings of the appearance of the accused of this category by putting simple condition that he will not leave India, may be without prior approval or permission of the court. The court should not have permitted Suresh Vallabhbhai to retain the passport with him. If it would have been ordered he would not have any opportunity to run away from the court. That what precisely has been done by that person. That person was released on bail on furnishing security of Rs.2,000/= and naturally looking to this meagre sum the surety would not have bothered for this accused and on his absconding from the court, he may not have any difficulty to get released himself from this surety by paying the amount of Rs.2,000/=. That has been done in the present case. The offence u/s.498A, 506(2), 323, 504 and 114 of the Indian Penal Code are not ordinary offence but these are offences against the society and are serious offences. In such matters, the court has to take all possible care that the accused may not run away and for which while granting bail to him all conditions which are in consonance with and in the interest of justice ought to have been put.

#. I fail to see any reasonableness and justification in the approach of both the courts below in the matter, re.: applications filed by the petitioners below ex.8 & 9. It is true that these applications should have been filed by petitioner No.1 but in the facts and circumstances of the case, only on this technical ground, substance of the matter cannot be lost sight of. This accused, Suresh Vallabhbhai has, in fact, misused the very discretionary relief granted in his favour by the trial court and in fact, he has abused the process of the court. Not only this, he has violated one of the conditions subject to which he was released on bail. In such cases, the learned court below should have taken all the care to see that his presence is secured in the trial of the case. This criminal case has been filed in the year 1992 and till date, he has neither surrendered nor his presence could be secured. This is a case where certainly provisions of Sections 82 and 83 of the Criminal Procedure Code are attracted and these are to be put in service by the learned trial court so that the presence

of the absconding accused may be procured in the criminal case. Both the courts below have taken the matter casually and lightly so far as it relates to applications filed by petitioners below ex.8 and 9. Rejection of these applications certainly results in miscarriage of justice to petitioner No.1 and will cause prejudice to her as a serious offence committed by Suresh Vallabhbhai will remain pending trial and will remain pending trial in case the provisions as contained in Sections 82 and 83 of the Code are not applied for all the years to come.

#. As a result of aforesaid discussion, though this petition to the extent it relates to challenge to the order of the learned trial court passed below ex.6 which has been confirmed by Addl. Sessions Judge, Surat, is dismissed, the order of the learned trial court rejecting the applications filed by petitioners below ex.8 and 9 is quashed and set aside and these two applications are allowed and the learned trial court is directed to take all necessary steps in the matter in accordance with the relevant provisions as contained in the Criminal Procedure Code. The learned trial court is further directed to complete the trial of the case against respondents No.2 and 3, the senior citizens, within three months from the date of receipt of Writ of this order and compliance of this order be reported to this court. Rule is made absolute to this extent with no order as to costs.

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